



***Town of Tyngsborough***  
*Zoning Board of Appeals*  
Town Hall-25 Bryants Lane  
Tyngsborough, MA 01879-1003  
(978) 649-2300, Ext. 115

**TYNGSBOROUGH ZONING BOARD OF APPEALS MINUTES**

**March 8, 2012**

**APPROVED**

Attachments:

1. Meeting Agenda
2. 8 King David Rd. ZBA Application – 2/15/12
3. Town Department Comments for 8 King David Rd.
4. Deschenes & Farrell Letter regarding Merrimac Landing – 3/1/12

Members Present: Robb Kydd, Chairman  
Chris Mechalides, Vice Chairman  
Claire Cloutier  
Cheryl Bradley  
Joseph Polin  
Scott Bordeleau

**6:30pm** Meeting was called to order by Chairman R. Kydd

**Public Hearing #1**

C. Mechalides recused herself from this hearing.

**JAMES PATIERNO TRUSTEE OF MISSICK REALTY TRUST(PURCHASER) –  
8 KING DAVID RD.** – Assessor Map 32A, Lot 88; Request a SPECIAL PERMIT  
under Section 2.15.22 AND 2.15.24 of the Zoning By-Law to raze the existing house and  
replace with new dwelling in an R2 Zone. *Advertised in the Lowell Sun Thursday  
February 23, 2012 and Thursday March 1, 2012.*

**Abutters List Present and Complete**

**C. Bradley:** Motion to waive the reading of the Abutters List

**J. Polin:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Application Presentation by Applicant/Designee:

Atty. Peter Nicosia appeared for the applicant James Patierno. Atty. Nicosia explained that this is a simple raze and re-build project. The existing home was built in 1940 which pre-dates the 1955 zoning bylaws. He went on to say that the home as it is placed now is non-conforming regarding the setbacks. The new dwelling will be placed on the lot in order to meet all R2 Zone setbacks. Atty. Nicosia added that the new dwelling will improve the market value of the neighborhood.

An abutter from 12 King David Rd. asked to see the plans in order to get a better idea of what was going on. He asked that the cedar fence along the property line be kept as it offers some much desired privacy between the small lots. Mr. Patierno agreed to keep the fence. No other abutters spoke for or against this project.

**C. Cloutier:** Motion to close the public portion of the hearing

**J. Polin:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Board Discussion and Q&A to Applicant with Applicant response

- The Board noted that Conservation Commission approval is required. The applicant indicated that they have a Request for Determination of Applicability hearing on March 13, 2012.

Review Notes/Comments on Application from other Tyngsborough Departments

Building Commissioner: None

Planning Board: None

Board of Health: On sewer

Fire Dept.: None

Conservation Commission: Wetland within 100 ft. of proposed work (across street).

Applicant requires approval from Conservation.

Sewer Dept.: None

Highway Dept.: None

Other (if applicable): None

**J. Polin:** Motion to grant a Variance and Special Permit for 8 King David Rd.

**C. Bradley:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes Unanimous: 5-0**

**Motion written as follows:**

Motion to **APPROVE** JAMES PATIERNO TRUSTEE OF MISSICK REALTY TRUST(PURCHASER) – 8 KING DAVID RD. Assessors Map 32A, Lot 88; request for Variance for requirements of Zoning By-Laws for square footage in an R-2 Zone, from required 20,000 sq.ft. to 10,000 sq. ft. and for a Special Permit under Section(s) 2.15.22 and 2.15.24 to raze existing structure, clear lot, hall out buildings and construct new 26' x 36' 2-story colonial with approved setbacks as shown on plan view, included in that is to keep right property line 8' cedar fence, approximately 100ft. in length in an R-2 Zone contingent on Planning Board, Conservation and Board of Health.

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**OTHER BUSINESS**

1. Discuss modification of Merrimac Landing Comprehensive permit to allow development of ten (10) townhouse style, 2-bedroom rental units; twenty-five percent (25%) would be rented as “affordable” units.

The developers of Merrimac Landing communicated to the Board that they were detained at another meeting and would arrive at tonight’s meeting by 8:00pm.

Tyngsborough Housing Authority Director Rick Deleo requested that he be able to address the Board to discuss this request. Mr. Deleo briefed the Board on his understanding concerning the parcel that was designated to be donated to the Town as part of the Merrimac Landing Comprehensive Permit. This parcel was to be used by the Housing Authority to build elderly housing. However, the Housing Authority determined that the parcel is not conducive to elderly housing because it is too hilly, and too small for what is needed for the seniors. Mr. Deleo went on to say that during discussions with the developer, there were three options on the table: build on the parcel, donate the parcel, receive a monetary settlement from the developer for the parcel. The developer rejected that option.

It is still unclear who actually holds the Deed on this parcel as it appears that the Town has not accepted it. R. Kydd is under the assumption that the developer offered it to the Town but the Town never accepted it. C. Mechalides noted that the Tyngsborough Housing Partnership was established by the State because the Housing Authority cannot buy and sell property.

R. Kydd established that this request for a modification needs to be voted on as a substantial or insubstantial change at tonight’s meeting and then move forward with a public hearing if necessary.

**C. Cloutier:** Motion to deem the request dated 3/1/12 for a modification to the Comprehensive Permit for Merrimac Landing is a **SUBSTANTIAL CHANGE**.

**J. Polin:** 2<sup>nd</sup> the motion

**In Favor: 6 Opposed: 0**

**Passes: 6-0**

R. Kydd noted that the Board now has to hold a public hearing within 30 days, however, the timing of the next meeting is April 12<sup>th</sup> which is beyond the 30 days. The Board discussed moving the meeting to April 5<sup>th</sup> in order to meet that deadline. In addition, they requested that the following information be assembled: 1) Who actually owns the parcel in question. 2) What is the value of the parcel.

Merrimac Landing developer representative Atty. Doug Deschenes appeared before the Board at 8:15pm to learn about the vote and said that he would confer with his client regarding the possible waiving of the 30 day hearing requirement so as not to rush the Board. He would submit a letter to the Board within the next few days.

### **ADMINISTRATIVE**

1. Minutes: No minutes were ready for approval.
2. New Business:
  - The Board requested an update from Town Counsel regarding the Lantry case and what is the Board's next move.
3. Next meeting is scheduled for: April 12, 2012

**8:30pm**

**S. Bordeleau:** Motion to adjourn

**J. Polin:** 2<sup>nd</sup> the motion

**In Favor: 6 Opposed: 0**

**Passes: 6-0**

Minutes respectfully submitted by  
Pamela Berman, ZBA Administrative Assistant